

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----X
KENNETH PASQUARIELLO,

Plaintiff,

-vs-

NATIONAL RAILROAD PASSENGER CORP.,
And MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
Defendants.
-----X

MAGISTRATE JUDGE Mpb

RECEIPT # _____
AMOUNT \$ 150
SUMMONS ISSUED yes
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED _____
BY DPTY. CLK. FUM
DATE 8/25/04

COMPLAINT

AS AGAINST NATIONAL RAILROAD PASSENGER CORPORATION

COUNT I

1. The plaintiff is a resident of Centerville, Massachusetts, and brings this action against the defendant, National Railroad Passenger Corporation, a railroad corporation duly established by law, pursuant to the provisions of 45 U.S.C.A., Section 301, et seq., and having its principal office at 400 North Capital Street, N.W., Washington, D.C., and having an usual place of business in Boston, Massachusetts for injuries suffered by him while in the employ of the defendant. This action is brought by virtue of the provisions of the Federal Employers' Liability Act, 45 U.S.C.A., Section 51, et seq.

2. During all the times herein mentioned, the

defendant was a common carrier, engaged in the business of interstate commerce, and, as such, operated a railroad in such business between the said Boston, Massachusetts and Washington, D.C.; and, at the time the plaintiff received the injuries complained of, both he and the defendant were engaged in interstate commerce, within the meaning of the said Federal Employers' Liability Act.

3. On or about February 21, 2003, the plaintiff was employed as a train director by the defendant and was engaged in his duties as a train director at the Waltham Tower, Waltham, MA which tower, yard, tracks, rails, engines, trains, cars and all other equipment and appliances appurtenant thereto were owned and/or operated and/or controlled and/or maintained by the defendant, and as a result of the negligence of the defendant, its agents, servants or employees, the plaintiff was injured.

4. As a result of the said accident, the plaintiff was made sick, sore and lame and has suffered great pain of body, anguish of mind and will so continue to suffer for an indeterminate period of time in the future; that prior to said

accident, the plaintiff was earning the wages of a train director as an employee of the defendant; that as a result of the said accident, the plaintiff has been incapacitated and prevented from engaging in his employment and that the plaintiff will continue to be so incapacitated in the future; that the plaintiff has been and for some time in the future will be caused to incur expenses for doctors' and hospital services and for medicine in caring for the said injuries.

COUNT II

1. The plaintiff is a resident of Centerville, Massachusetts, and brings this action against the defendant, National Railroad Passenger Corporation, a railroad corporation duly established by law, pursuant to the provisions of 45 U.S.C.A., Section 301, et seq., and having its principal office at 400 North Capital Street, N.W., Washington, D.C., and having an usual place of business in Boston, Massachusetts for injuries suffered by him while in the employ of the defendant. This action is brought by virtue of the provisions of the Federal Employers' Liability Act, 45 U.S.C.A., Section 51, et seq.

2. During all the times herein mentioned, the defendant was a common carrier, engaged in the business of interstate commerce, and, as such, operated a railroad in such business between the said Boston, Massachusetts and Washington, D.C.; and, at the time the plaintiff received the injuries complained of, both he and the defendant were engaged in interstate commerce, within the meaning of the said Federal Employers' Liability Act.

3. On or about February 21, 2003, the plaintiff was employed as a train director by the defendant and was engaged in his duties as a train director at the Waltham Tower, Waltham, MA, which tower, yard, tracks, rails, engines, trains, cars and all other equipment and appliances appurtenant thereto were owned and/or operated and/or controlled and/or maintained by the defendant, and as a result of the failure of the defendant, its agents, servants or employees to use reasonable care to provide the plaintiff a safe place in which to work and to furnish him with safe and suitable tools, appliances and equipment, the plaintiff was injured. The defendant also failed to comply with applicable OSHA regulations relating to the stairs of the Waltham Tower.

4. As a result of the said accident, the plaintiff was made sick, sore and lame and has suffered great pain of body, anguish of mind and will so continue to suffer for an indeterminate period of time in the future; that prior to said accident, the plaintiff was earning the wages of a train director as an employee of the defendant; that as a result of the said accident, the plaintiff has been incapacitated and prevented from engaging in his employment and that the plaintiff will continue to be so incapacitated in the future; that the plaintiff has been and for some time in the future will be caused to incur expenses for doctors' and hospital services and for medicine in caring for the said injuries.

**AS AGAINST MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY:**

COUNT III

1. The plaintiff is a resident of Centerville, Massachusetts, and brings this action against the defendant, Massachusetts Bay Transportation Authority, a political and corporate body established under the provisions of Massachusetts General Laws, Ch. 161A as amended, and having a usual place of business in Boston,

Massachusetts for injuries suffered by the plaintiff while in the employ of Amtrak and while working on the property of the Massachusetts Bay Transportation Authority. This action is brought by virtue of the common law of the Commonwealth of Massachusetts.

2. During all the times herein mentioned, the defendant, Massachusetts Bay Transportation Authority, owned and/or operated and/or maintained and/or controlled a commuter rail service on and over railroad tracks from Boston, Massachusetts to Needham, Massachusetts, including Back Bay Station.

3. During all times mentioned, the plaintiff was employed by Amtrak and was an invitee of the defendant, Massachusetts Bay Transportation Authority on or about said commuter lines, tracks and property of the Massachusetts Bay Transportation Authority.

4. On or about February 21, 2003, the plaintiff was employed as a train director by the defendant and was engaged in his duties as a train director at the Waltham Tower, Waltham, MA, which yard, tracks, rails, engines, trains, cars and all other equipment and appliances appurtenant thereto

were owned and/or operated and/or controlled and/or maintained by the defendant, and as a result of the failure of the defendant, its agents, servants or employees to use reasonable care to provide the plaintiff a safe place in which to work and to furnish him with safe and suitable tools, appliances and equipment, the plaintiff was injured.

5. Said commuter rail service and all the lines, tracks, rails, crossovers, switches, interlocking systems, signal systems, communication systems, towers and all the persons working thereon or present thereon were owned and/or operated and/or controlled and/or maintained by the defendant, Massachusetts Bay Transportation Authority, its agents, servants, employees or other persons for whose actions the defendant, Massachusetts Bay Transportation Authority, was responsible; in addition, all engines, trains and other equipment operating thereon, and all persons involved in such operation were owned and/or operated and/or controlled and/or maintained by the defendant, Massachusetts Bay Transportation Authority, its agents, servants or persons for whose actions the defendant was responsible; in addition, the right of way, track beds and other

structures, equipment and appliances situated under, over, next to, connected to, associated with or appurtenant to the tracks, rails, crossovers, switches, interlocking systems, signal systems, communication systems and towers were owned and/or operated and/or controlled and/or maintained by the defendant, Massachusetts Bay Transportation Authority, its agents, servants or employees or persons for whose actions the defendant was responsible and that as a result of the negligence of the defendant, Massachusetts Bay Transportation Authority, its agents, servants, employees or persons for whose actions the defendant was responsible, the plaintiff was injured.

6. As a result of the said accident, the plaintiff was made sick, sore and lame and has suffered great pain of body, anguish of mind and will continue to suffer for an indeterminate period of time in the future; that prior to said accident, the plaintiff was a strong, able-bodied man, capable of earning and actually earning the wages of a Train director as an employee of Amtrak; that as a result of the said accident, the plaintiff has been incapacitated and prevented from engaging in his employment, and that the plaintiff will continue to be so incapacitated in the future;

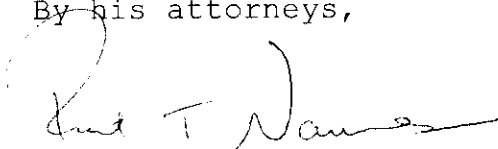
that the plaintiff has been and for some time in the future will be caused to incur expenses for doctor's and hospital services and for medicine in caring for the said injuries.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS.

PLAINTIFF REQUESTS TRIAL BY JURY.

By his attorneys,

DATE: 8-23-04


Robert T. Naumes, Esq.
THORNTON, EARLY & NAUMES
100 Summer Street
Boston, MA 02109
(617) 720-1333
Attorney for Plaintiff
BBO# 367660

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

KENNETH PASQUARIELLO V. NATIONAL RAILROAD PASSENGER CORP., ET AL

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐ NO ☒

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐ NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☐ NO ☒

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME ROBERT T. NAUMES, THORNTON & NAUMES, LLP

ADDRESS 100 SUMMER ST., 30TH FL., BOSTON MA 02110

TELEPHONE NO. 617-720-1333

The JS 44 civil cover sheet and the information contained on neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of a Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

KENNETH PASQUARIELLO

DEFENDANTS

NATIONAL RAILROAD PASSENGER CORP., AND
MASSACHUSETTS BAY COMMUTER RAILROAD

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

BARNSTABLE 1:17

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert T. Naumes, Esq.
Thornton & Naumes LLP
100 Summer St., 30th FL
Boston MA 02110 (617-720-1333)

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

Tort for negligence under the Federal Employers' Liability Act,
45 U.S.C.A., Section 51 et seq.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DRWC/DRWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
(1) UNDER F.R.C.P. 23

DEMAND \$
500,000

Check YES only if demanded in complaint.
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

8-23-04

Robert T. Naumes